In this case, i.e. C.S. 68/39, the allegations in the first four paragraphs of the plaint were all admitted severally by the three defendants who each filed separate but identical defences. The 5th paragraph of the plaint averred that the first defendant who was managing the partnership although requested to render partnership accounts had failed to do so. The prayer was for such accounts and winding up of the partnership.

So far as the defences were concerned the only material issue was whether the plaintiff's claim was barred by limitation and the Limitation Enactment was specifically pleaded.

The plaintiff is the administratrix of the estate of P.R.M.N. Narayan Chettiar (hereinafter referred to as "the deceased"), and sued as such.

The deceased had, in April, 1927, entered into partnership with the three defendants, the terms of such partnership being set out in a formal Tamil document, a copy of which was attached to the plaint. It is clear that it was contemplated that the firm or business of P.R.M.S.T. thereby established, should subsist for more than six years.

The deceased died in India intestate on the 29th February, 1932, and on the 22nd August, 1938, letters of administration were granted locally to the plaintiff, his widow.

Although the defences alleged that the defendants were always ready and willing to go into accounts with the plaintiff and that the suit was unnecessary, yet her right to such accounts is denied and limitation pleaded. The particular Article on which this plea was founded is Article 86 of the Limitation Enactment (Cap. 18) which reads as follows:

> "86. For an account and a share of the profits of a dissolved partnership"

the period being three years from the date of dissolution.

It was not disputed that the partnership was dissolved on the 29th February, 1932, by reason of the death of the deceased, a member of the partnership firm, *vide* Contract Enactment (Cap. 52), section 253 (j).

The case for the plaintiff in this respect was based on section 16 (i) of the Limitation Enactment which reads as follows:

> "16. (i) When a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application".

The case for the defence and the interpretation of this section was founded on the decision of Cussen, J., in *Abdul Majeed v. Official Administrator, F.M.S.*[1]. In that case the prayers were mainly for declarations in respect of immovable property acquired on behalf of a partnership which was dissolved by death of a partner in 1915 but Cussen, J., considered this section and in doing so stated as follows:

> "The difficulty, where there is such, in the application of section 16 (i) to any particular case does not lie in and is not to be solved only by the question as to whether the cause of action arises on or after death, on which there has been much argument before me, but it also lies in the simple question—could the deceased, if alive, have brought the suit? If the answer is yes, the section applies; if the answer is no, it does not apply".

The fact that on the prayers before him and on the facts of the case before him, the learned Judge answered the question in the negative does not seem to me material, and I asked myself the same question and had no hesitation in answering it in the affirmative.

The right to demand accounts of a partnership of which he is a member, is inherent in a partner and he can always, subject to any provisions to the contrary in the terms of the partnership, exercise such right and demand, and, if necessary, sue for accounts, whether or not he seeks dissolution in addition. Such right is existent and accrues from day to day as long as he is a partner and it descends to the personal representative of a deceased partner and subsists for a period of three years as from the date of the appointment of such personal representative, the period which may have elapsed between the date of death and date of such appointment ceasing to count by reason of section 16 (i).

For these reasons I allowed the plaintiff's claim.

Order for accounts.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

April 13, 1940.

THEIVANAI ACHI vs. P.R.M.S.T. FIRM.

[SELANGOR CIVIL SUIT No. 78 of 1939]

Partnership—Suit by partner against firm—Accounts ordered in previous suit—Whether present suit maintainable.

The plaintiff sued as administratrix of a deceased partner in the defendant firm claiming the refund of a deposit alleged to have been made by the deceased as trustee for a charity. The defence alleged that it was a personal deposit by the deceased, and that a partner could not sue the firm, more particularly as in a previous suit an order had been obtained for partnership accounts on the taking of which this item would be gone into and sifted.

Held, that on the facts there was no evidence that the funds belonged to a charity, whereas there was some evidence that this was a loan which had been made by the deceased to the firm and which had been treated as such by the firm.

Held further, that although the doctrine, that one partner may not maintain a suit, involving accounts, against another, may not apply where the firm itself is sued (as in this case) nevertheless, an order for partnership accounts having already been made, this suit was not maintainable by the plaintiff.

Case referred to:—

(1) *Rustomji v. Sheth Purshotamdas,* I.L.R. 25 Bom. 606.

TRIAL OF SUIT.

Hum Yam Teh for plaintiff.

F. G. Charlesworth with T. Rajendra for defendant.

Gordon-Smith, J.—The parties to this suit are substantially the same as in Civil Suit 68/39, but in this later suit the firm is sued in its firm name and it is not against the three individual partners, a defence being entered by No. 1 defendant in the earlier suit, as one of the partners.

The claim was for $3,306.79 and arises out of the following facts:

On the 19th May, 1929, the deceased then a partner, deposited with the firm a sum of $3,000 part of which was repaid, namely by $1,000 on the 18th February, 1930, and by a further $251.94 on the 23rd April, 1931. This and the first repayment is evidenced by a document attached to the plaint and as there was some question as to its proper translation, I set out the material parts.

It is headed "From PR. M. ST. Kuala Selangor" and is "To Kuala Lumpur, T.P.". It is dated the 19th May, 1935, and reads:

> "Kathiresan writes—
>
> We have given credit, as on this date, to the sum of $3,000 (dollars three thousand) in your favour with N. PR. as trustee bearing interest at current account rate. On paying the interest and principal we shall get back this letter.
>
> PR. M. ST. Kathiresan Chetty.

Under date of the 18th February, 1930, it is endorsed as follows:—

> "Payment on this: Paid to N. PR. Narayanan Chettiar $1,000 (dollars one thousand only).
>
> Ramasamy Pillay,
>
> attorney of PR. M. ST. Kathiresan Chettiar".

This translation was made by the Court Interpreter, Mr. G. M. Rajendram, who stated, in effect, that the word "trustee" was a free interpretation of the Tamil word "Maral" and in accordance with Chetty usage, but that the word literally meant "Part, side, behalf, means, medium" and was used to denote that a deposit was made on behalf of a third person, e.g., a woman, minor, or an institution, and denotes the medium by whom the deposit is made and who is looked upon by the firm as the person authorised in regard thereto.

The deposit and payments on account were not in issue but it was alleged and argued for the plaintiff that the deposit was made by the deceased as a trustee for a charity which was signified by the letters "T.P." to whom the deposit receipt was addressed, and that being so, this deposit was separate and distinct to the partnership accounts although incorporated in the partnership assets.

For the defence it was alleged and argued that the deposit was made by a partner as a loan and that the firm had no knowledge of anything to the contrary and this being so, a partner could not sue the partnership firm, particularly as, in the previous suit, such partner had already obtained an order of Court for partnership accounts, on which the question of this loan would be gone into and sifted.

In support of this contention, Pollock on the Indian Contract Act (6th Edition at page 725) states:

> "No suit can be maintained by one partner against another in respect of any transaction which forms an item of the partnership account, for such a suit would, from its very nature, involve the taking of the whole partnership account, and this can only be done in a suit for an account. Thus one partner cannot sue for money lent by him to a firm of which he is a member, for the advance is but an item in the partnership account".

For this last proposition the case of *Rustomji* v. *Sheth Purshotamdas*[1] was quoted to me in the judgment in which these words actually occur, *verbatim*. As stated by the learned Judge in that case, this doctrine is founded on the elementary rule of procedure, too often disregarded in this country, that the same individual, even in different capacities cannot be both plaintiff and defendant to one and the same action. This difficulty, of course, is got over in Courts in Equity and is not allowed to stand in the way of doing justice between the parties when all interested are before the Court.

I would, however, emphasize that this suit is against a firm and not against two or more individual members constituting a firm. In such a case and on different facts, such a doctrine might not apply.

It was, however, argued that the deposit receipt clearly showed that it was not the deceased's own money that was advanced, but without deciding this point it is equally clear, from the endorsement, that the firm treated it as a loan by the deceased and included it as an item in the partnership accounts and assets.

There is no evidence whatsoever as to the loan being made out of funds belonging to a charity established by the deceased and it may very well be one of those nebulous charities which are so often formed as a means of creating hidden reserves. In any case it is, in my opinion, immaterial whether such is the case or not, the loan was made by the deceased to the firm and treated as such by the firm. As already stated, a suit for an account having already been successful and an order made thereon, I hold that this suit is not maintainable by the plaintiff and such must therefore be dismissed.

As regards the costs, I have, so far, made no order in respect of the costs in either suit and although at the moment I can see no reason why costs should not follow the event on both decisions, I am prepared to hear counsel thereon.

Suit dismissed.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

March 15, 1940.

R. M. A. T. M. MEYAPPA CHETTIAR

vs.

THE FEDERATED MALAY STATES.

[PERAK ORIGINATING SUMMONS No. 242 of 1937]

Estate Duty Enactment (Cap. 136), sections 3, 6, 17 and 37—Rules for regulating procedure under section 37—Joint Hindu Family—Share in partnership in name of Karta belonging to family—Interest of minor son therein—Charity—Gift to—Share of, in partnership—Liability under section 17.

Ramasamy Chettiar founded the money lending business of "R.M.A.T.M." and died in 1916 leaving three sons, namely Periya Meyappa, Chinnah Meyappa (hereinafter called the deceased) and Supramaniam, who continued to carry on the business. Periya Meyappa died in 1919 leaving a son, Ramanathan. In 1931 disputes arose, which were settled by the division of the share-capital of the business which stood in the vilasam of "R.M.A.T.M." into three equal parts, which were then entered under the vilasams of "R.M.M.", representing Periya Meyappa, "M.R.M.M.", representing the deceased, and "R.M.S.P.", representing Supramaniam. The remaining portion of the share capital was entered in the name of "Pasumadam Charity", while the accretions or profits accruing on this portion of the capital were credited to the same name.

The Collector of Estate Duty, in assessing the estate duty of the deceased (a) disregarded "Pasumadam Charity" as owning any interest or share capital in the business, with the result that the share of the deceased was assessed on the basis of being one-third of the whole business: (b) disregarded the accretions or profits in the name of "Pasumadam Charity" as a liability of the business: and (c) treated the whole of the share capital standing in the vilasam "M.R.M.M." as liable to duty in respect of the estate of the deceased.

The plaintiff objected to this basis of assessment on the grounds (a) that the "Pasumadam Charity" related to existent entities to whom a complete gift or effective declaration of trust of share capital, and therefore of consequent accretions or profits, had been made: and (b) that the deceased and his son (who was also named Meyappa) constituted a Joint Hindu Family; that the share of the business standing in the vilasam "M.R.M.M." was the property of this family; and that on the death of the deceased only one-half of this share was subject to Estate Duty.

At the hearing of the application, the plaintiff asked for leave to amend the originating summons:

Held, that upon a true construction of Rule 4 of the Rules regulating the procedure under section 37 of the Estate Duty Enactment (I Allen p. 82) subject to the power of the Court to allow an amendment the applicant shall not in his Originating Summons state, nor at the hearing thereof be allowed to rely upon any grounds of appeal not specifically set forth in the written statement of grounds given to the Collector under Rule 1.

Held further, that the mere transfer of moneys into the name of a charity in the books of a Chettiar firm did not constitute an effective gift to the Charity. [**State of Perak v. P.R.A.L.M.M. Muthukaruppan Chettiar**(1) followed].

Secondly that there was no evidence upon which it could be contended that there was an effective trust in favour of the Charity. Thirdly that there was no evidence of any agreement constituting the Charity a partner in the business. And lastly there was no evidence that the share capital was contributed by the Charity, and consequently any claim to treat the amounts credited to the Charity as a liability did not come, as it must if it is to succeed, within section 17 of the Estate Duty Enactment. Furthermore the Charity is resident outside the Federated Malay States, and such a claim fails under subsection (2) of the same section.

And held further, that, the son of the deceased being a minor and there being no evidence that he had been admitted to the benefits of or to the partnership, he had no interest in the share in the partnership standing in the vilasam of "M.R.M.M.", other than such interest as he may have possessed by virtue of being a member of a Hindu Joint Family. The deceased, as head or Karta of the family, had certain exclusive rights over such share, his actions in accordance therewith being binding upon the family. He is a person competent to dispose of property as described by section 3 of the Estate Duty Enactment. He is also a trustee of the family property, which passes on his death unless the trust property has been dealt with as set out in the **proviso** to section 6 of the Estate Duty Enactment.